

TITLE 329 SOLID WASTE MANAGEMENT DIVISION

Rule Information Sheet

Definition of Solid Waste for Hazardous Waste Management LSA Document #20-23

Overview

This rulemaking amends 329 IAC 3.1-5 and 329 IAC 3.1-6 to update the identification of solid waste for the purposes of hazardous waste management to be consistent with the analogous federal requirements in 40 CFR 260 and 40 CFR 261. The proposed amendments will address certain provisions of the federal definition of solid waste that were affected by a vacatur ordered by the U.S. Court of Appeals for the D.C. Circuit on July 7, 2017, and the subsequent U.S. Environmental Protection Agency (U.S. EPA) final rule published on May 30, 2018. The rulemaking will no longer include additional state-specific requirements, as proposed in the second notice of comment period, and now only includes the incorporation by reference of federal requirements.

The Indiana Department of Environmental Management (IDEM) previously adopted the 2015 U.S. EPA final rule that updated the federal definition of solid waste. However, the 2017 federal court vacatur simultaneously voided the 2015 definition of solid waste requirements in Indiana's rules due to a statutory provision at IC 13-14-9-8(h). As a result, the affected portions of Indiana's rules were no longer enforceable and did not include the transfer-based exclusion at 40 CFR 261.4(a)(24) and the changes to the legitimate recycling requirements at 40 CFR 260.43. IDEM is proposing to incorporate by reference the changes in the May 30, 2018, U.S. EPA final rule to be consistent with the latest updates to the federal identification of solid waste for the purposes of hazardous waste management.

As a result of amendments made to 329 IAC 3.1-6-1 in the final rule for LSA Document #22-216 that became effective on March 24, 2023, IDEM is presenting this proposed rule for final adoption a second time. The proposed rule adopted on March 8, 2023, did not include the amendments in LSA Document #22-216, which would unintentionally repeal the recently effective rule language in 329 IAC 3.1-6-1 if LSA Document #20-23 is promulgated as currently adopted. In this proposed rule presented for final adoption, 329 IAC 3.1-6-1 includes the additional Federal Register notice that was adopted in LSA Document #22-216 and became effective on March 24, 2023. No other changes to the rule language are being proposed for final adoption.

Affected Persons

This rulemaking primarily affects persons and entities involved in the management of hazardous secondary materials that pursue the transfer-based exclusion at 40 CFR 261.4(a)(24). Those affected may include hazardous secondary material generators, transporters of the secondary hazardous material, intermediate facilities, reclamation facilities, and communities where the facilities are located.

Reasons for the Rule

The main reasons for this rulemaking are to amend Indiana's hazardous waste rules to include the recent updates to federal definition of solid waste for the purposes of hazardous waste management and address gaps in Indiana's rules resulting from the federal court vacatur. By adopting these updates, Indiana's rules will be consistent with the federal transfer-based exclusion at 40 CFR 261.4(a)(24) and legitimate recycling requirements at 40 CFR 260.43 that were revised in the 2018 U.S. EPA final rule. The rulemaking also will resolve gaps in Indiana's rules that were created by the vacatur of the requirements in the 2015 U.S. EPA final rule and the state statutory provision at IC 13-14-9-8(h).

Another purpose of this rulemaking is to comply with the requirements for an authorized state hazardous waste program. Because IDEM administers an authorized state program with the approval of the U.S. EPA, IDEM must maintain hazardous waste rules that are no less stringent than the federal rules. In some situations, IDEM will adopt federal rules that are less stringent than existing state rules to maintain consistency with the federal rules and offer available compliance alternatives or cost saving opportunities. The proposed rule includes federal hazardous waste rules that are less stringent than Indiana's existing rules on the subject matter and offer an additional exclusion from the definition of solid waste. After adoption of the proposed rule, Indiana's authorized hazardous waste program will be consistent with the most recent updates to the federal definition of solid waste.

Economic Impact of the Rule

The proposed rule primarily offers potential cost savings to regulated entities that meet the exclusion from the definition of solid waste at 40 CFR 261.4(a)(24). Meeting the conditions of the exclusion will allow a regulated entity to manage the secondary hazardous materials without applying for a hazardous waste facility permit, which ranges in cost from \$23,800 to \$40,600 for a new permit. Maintaining compliance with the exclusion also does not require a permit renewal fee, which ranges in cost from \$29,660 to \$58,600. In addition, a regulated entity that meets the exclusion will have lower annual operating fees and compliance costs than a facility with a hazardous waste facility permit. For example, a facility operating under the exclusion will not be subject to the annual permit operation fees, which range from \$1,500 to \$50,000.

Scheduled Board Action and Hearings

First Public Hearing: November 9, 2022, at 1:30 p.m., at the Indiana Government Center South, 10 North Senate Avenue, Conference Room A, Indianapolis, Indiana.

Second Public Hearing: June 14, 2023, at 1:30 p.m., at the Indiana Government Center South, 10 North Senate Avenue, Conference Room A, Indianapolis, Indiana.

IDEM Contact

Additional information regarding this rulemaking action can be obtained from Dan Watts, Rules Development Branch, Office of Legal Counsel, dwatts1@idem.in.gov, (317) 234-5345, or (800) 451-6027 (in Indiana).